

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE MARVIN BRANDON,

Defendant-Appellant.

---

UNPUBLISHED

April 26, 2011

No. 297093

Wayne Circuit Court

LC No. 07-012121-FC

Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant Tyrone Marvin Brandon appeals as of right his sentences on resentencing for armed robbery, MCL 750.529, possession of a firearm by a felon, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. On appeal, defendant argues that the trial court did not have the authority to adjust his maximum sentence upward and asks this Court to order the correction of his Pre-Sentence Investigation Report (PSIR). We conclude that defendant's claim that the trial court erred when it amended his judgment of sentence is moot, but that he is entitled to have his PSIR corrected. For that reason, we affirm his judgment of sentence, but remand for further proceedings.

The trial court initially sentenced defendant to concurrent prison terms of 11 to 15 years for the armed robbery conviction and two to five years for the felon in possession conviction, which were to be served consecutive to a two-year term for the felony-firearm conviction. This Court affirmed defendant's convictions and sentences but remanded for correction of his presentence report.<sup>1</sup> When defendant appeared for resentencing, his counsel argued that defendant's original sentence to serve 11 to 15 years for the armed robbery conviction violated the two-thirds rule stated in *People v Tanner*, 387 Mich 683, 689-690; 199 NW2d 202 (1972). The trial court amended defendant's sentence for robbery to 11 to 16½ years.

---

<sup>1</sup> See *People v Brandon*, unpublished opinion per curiam of the Court of Appeals, issued October 22, 2009 (Docket No. 282941).

Defendant now argues that the sentencing court violated the rule set forth in *People v Thomas*, 447 Mich 390, 392-394; 523 NW2d 215 (1994), when the court, after discovering that defendant's original sentence violated the two-thirds rule, adjusted defendant's maximum sentence upward. We agree that the sentencing court erred in adjusting the maximum sentence; however, we dismiss defendant's claim as moot because the amended judgment of sentence clearly provides that defendant's sentence for the armed robbery conviction is 10 to 15 years' imprisonment, which is the exact relief defendant requests on appeal. See *Eller v Metro Industrial Contracting, Inc*, 261 Mich App 569, 571; 683 NW2d 242 (2004) (stating that an issue is moot when this Court can no longer fashion a remedy). Although the sentencing court's oral pronouncement indicated the court's desire to sentence defendant to a term of 11 to 16½ years, a court speaks only through its written orders. *People v Vincent*, 455 Mich 110, 123; 565 NW2d 629 (1997). Because the Amended Judgment of Sentence reflects the sentence that defendant requests on appeal, there is no further relief that this Court can grant.

Defendant next argues that he is entitled to a PSIR that accurately reflects the sentencing court's order that defendant's absconder status as well as the listing of two prior misdemeanors be stricken from the PSIR. The PSIR that was stamped March 18, 2010, has not been updated to reflect the sentencing court's order. Although defendant's sentence would not be any different, he is entitled to an accurate PSIR. MCL 771.14(6); *People v Spanke*, 254 Mich App 642, 649; 658 NW2d 504 (2003). A corrected and updated copy should be prepared and sent to the Department of Corrections.

We affirm defendant's amended judgment of sentence. However, we remand this case to the trial court for the ministerial task of ordering the preparation of an updated and corrected PSIR and sending a copy of it to the Department of Corrections.

Affirmed, but remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering  
/s/ William C. Whitbeck  
/s/ Michael J. Kelly